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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 2522 of 2001 (O & M)
Date of decision: 29.10.2007

Joga Singh ...Appellant

Versus

Harbans Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. G.S.Sandhawalia, Advocate for the appellant.

Mr. Mukul Aggarwal, Advocate for respondents No.1 and 4.

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RAJESH BINDAL, J.

The defendant No.1 is in second appeal before this Court against the concurrent findings of fact by both the Courts below whereby suit filed by mother of respondent No. 1 for declaration to the effect that she was owner in possession of the suit land and the sale deed dated Feburary 13, 1991 got executed by the appellant from the plaintiff was a result of fraud and misrepresentation besides being without any consideration and challenge to the mutation entered into in favour of the appellant, was decreed.

On the basis of the evidence on record, both the Courts below found that the plaintiff Naranjan Kaur was 80 years of age. The appellant/defendant No.1 was residing with her and in view of fiduciary relationship between the parties and the plaintiff being an illiterate old lady, he took undue advantage of the same. He took Naranjan Kaur to Phillaur on the pretext of execution of power of attorney in his favour but got her thumb mark put on the sale deed. The alleged power of attorney, for the execution of which Naranjan Kaur was taken to Phillaur was not even produced on record nor any such plea was taken by the appellant/defendant no.1 in the written statement filed nor the purpose for which the power of attorney was to be executed was disclosed. Still further even it could not be proved as to in what manner the sale consideration of Rs. 1,68,500/- was

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paid by the appellant. Even the witnesses produced by the appellant did not corroborate the case set up by him. The appellant further was not able to prove as to in what manner and when the possession of the suit land was delivered to him after the sale deed was executed. It has also come on record that even the mutation was also sanctioned in the absence of Naranjan Kaur.

Learned counsel for the appellant submitted that even if it was found by the Courts below that consideration money for execution of the sale deed was not proved to have been paid, the suit could be decreed for payment thereof and the sale deed could not be held to be bad. He further submitted that appellant was living with Naranjan Kaur and the property was transferred by her in his favour out of love and affection as he was brought up by her as a son and there was no fraud played by him. However, considering the material produced on record, I do not find any merit in the contention raised by learned counsel for the appellant. In a case where the consideration money is not paid and it is further found that the signature/ thumb impression of the vendor is taken on the sale deed by misrepresenting the document, the sale deed itself has to be declared illegal as there was no willingness of the vendor to transfer the land and not that suit is to be decreed only to the extent of the payment of consideration money. Further the plea of the appellant that vendor, namely, plaintiff Naranjan Kaur had thumb marked the sale deed before the Sub Registrar is also to be rejected as it has come on record that she was taken to Phillaur for the purpose of execution of power of attorney, however, the reason for execution of power of attorney and contents thereof are not disclosed. No material has been referred to which could enable this Court to take a view that the findings recorded by the Courts below are perverse, accordingly, no illegality is found with the concurrent findings of fact by both the Courts below.

Accordingly, I do not find any substantial question of law arises in this appeal and the same is dismissed.

October 29, 2007 **(Rajesh Bindal)**
Pka **Judge**